

TABLE OF CONTENTS
AGRICULTURAL STEWARDSHIP ACT
GUIDELINES

	<u>Page</u>
Nature of Guidelines.....	3
Background on the Agricultural Stewardship Act (ASA).....	3
Brief Summary of the Act.....	4
SECTION A: WHAT THE ACT COVERS.....	4
1. Activities Covered by the ASA	
2. Definitions of Sedimentation, Nutrients and Toxins	
3. What the Act Means by “Pollution”	
SECTION B: HOW INVESTIGATIONS ARE CONDUCTED.....	6
1. Decision to Investigate	
2. Handling of Complaints	
3. Who Investigates	
4. Time Limitations on Investigations	
5. Notice to Owner or Operator of Investigation	
6. Notice of Findings from Investigation	
7. Extensions of Deadlines	
8. Notification of Landowner, if Different from Operator	
9. Right of Entry Explained	
10. Purpose and Scope of Investigation	
11. Evidence	
12. Sample Collection Techniques	
SECTION C: CONFIDENTIALITY OF INFORMATION.....	10
SECTION D: SUBSEQUENT VISITS TO FARM TO CHECK IMPLEMENTATION.....	10
SECTION E: APPEALS AND INFORMAL FACT-FINDING CONFERENCES.....	11

SECTION F: SOURCES OF ASSISTANCE FOR OWNERS OR OPERATORS.....11

1. Technical Assistance
2. Cost-Sharing
3. Financial Planning
4. Physical Planning for Compliance with ASA

SECTION G: VIOLATIONS AND PENALTIES.....13

SECTION H: INTERGOVERNMENTAL COOPERATION.....13

1. Department of Environmental Quality and the Virginia
Water Control Board
2. Department of Conservation and Recreation
3. Natural Resources Conservation Service
4. Virginia Cooperative Extension
5. Soil and Water Conservation Districts
6. Chesapeake Bay Local Assistance Department
7. Soil and Water Conservation Board
8. Virginia Department of Agriculture and Consumer Services

APPENDICES.....19

- Appendix A. Agricultural Stewardship Act
- Appendix B. Civil Penalties Matrix for the ASA Program
- Appendix C. Steps in Addressing ASA Complaints
- Appendix D. Steps to Consider During An Investigation
- Appendix E. Forms for the Agricultural Stewardship Act Program

GUIDELINES
AGRICULTURAL STEWARDSHIP ACT
Revised [Effective Date]

NATURE OF GUIDELINES

The Agricultural Stewardship Act¹ ("ASA or Act") requires that the Commissioner of Agriculture and Consumer Services ("Commissioner") develop guidelines to assist in the implementation of the ASA. These guidelines are not regulations and no one is required to abide by them. In fact, there are no regulations concerning the ASA. The only document that anyone must abide by is the ASA itself.

These guidelines set out procedures for implementing the ASA. As they are not regulations, they do not have the force of law. Matters addressed in these guidelines that are not required by statute may be waived or changed at the discretion of the Commissioner. In the event of any conflict between the guidelines and the ASA, the ASA will prevail. The Commissioner expects that these guidelines will be reviewed periodically to determine whether changes are needed.

The Commissioner welcomes your questions and requests for information about the ASA Program. All correspondence regarding the ASA guidelines can be directed to the address listed below or you can contact the ASA Program at 804/786-3538.

Commissioner
Agricultural Stewardship Program
Virginia Department of Agriculture and Consumer Services
P.O. Box 1163
Richmond, Virginia 23218

BACKGROUND ON THE
AGRICULTURAL STEWARDSHIP ACT

In response to increased public concerns for a clean environment, Virginia's agricultural leadership sought a way of dealing with agricultural water pollution that was different from the approaches used with other industries, such as manufacturers. Most manufacturing plants must obtain permits and follow strict rules of operation. The agricultural community wanted a different approach that did not rely on permits and strict operating rules, but took into account the wide variety of farming practices used in Virginia.

¹ Article 3.1 (Section 10.1-559.1 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

The ASA offers a positive approach to addressing pollution involving agricultural operations. It provides procedures by which individual agricultural producers can be alerted to areas of their operations that may be causing water pollution. Rather than developing regulations with strict rules governing every type of farming practice, the ASA looks at each farm individually.

BRIEF SUMMARY AGRICULTURAL STEWARDSHIP ACT (ASA)

The procedures created by the ASA begin with a complaint made to the Commissioner of the Virginia Department of Agriculture and Consumer Services. The Commissioner must accept complaints alleging that a specific agricultural activity is causing or will cause water pollution. However, not all complaints have to be investigated as will be discussed below. After the Commissioner receives a complaint and the complaint is one that must be investigated, he will ask the local soil and water conservation district (“District” or “local district”) whether it wishes to investigate the complaint. If the District does not wish to investigate the complaint, the Commissioner may conduct his own investigation. (A copy of the ASA is in Appendix A.)

The purpose of the investigation is to determine whether the agricultural activity (that was the subject of the complaint) is causing or will cause water pollution. If not, the Commissioner will dismiss the complaint.

If the agricultural activity is causing or will cause water pollution, the ASA gives the owner or operator an opportunity to correct the problem. The owner or operator will be asked to develop a plan containing “stewardship measures” (often referred to as “best management practices”) to prevent the water pollution. The owner or operator then develops the plan, and once the plan is developed, the District reviews it and makes recommendations to the Commissioner. If the Commissioner approves the plan, he will then ask the owner or operator to implement the plan within specified periods of time.

If the owner or operator fails to implement stewardship measures after a plan is approved, enforcement action under the ASA will be taken against the owner or operator.

In some cases, the ASA investigation will not produce sufficient evidence to support the conclusion that the agricultural activity in question is causing or will cause pollution. In those cases, the investigator will see if the owner or operator is receptive to suggestions on how the owner or operator might improve his practices to prevent complaints in the future. The purpose of the ASA is to solve problems by working one-on-one with the farmers.

SECTION A - WHAT THE ACT COVERS

1. Activities Covered by the ASA

The ASA applies to agricultural activities that are causing or will cause water pollution by sedimentation, nutrients or toxins. The only exception is when the agricultural activity in question is already permitted by the Virginia Water Control Board (through the Department of Environmental Quality). The

permits are usually: a Virginia Pollution Abatement ("VPA") permit (general or individual) for the storage and land application of animal waste; a Virginia Pollution Discharge Elimination System ("VPDES") permit for certain aquaculture facilities or for mixed production and processing operations; or a permit issued by the Commonwealth of Virginia for the land application of sewage sludge.

The ASA does not apply to forestry activities, odor concerns, or landfills. In terms of waste problems, the ASA would only apply to farm dumps where agricultural products or animal carcasses are disposed of and that have clear water quality impacts. Finally, the ASA does not apply to air pollution, or to water pollution caused by non-agricultural activities.

The Commissioner's staff will use Form 1 to determine whether or not the complaint can be investigated under the ASA. (A copy of Form 1 is in Appendix E.)

2. *Definitions of Sedimentation, Nutrients and Toxins*

Sedimentation is soil material, either mineral or organic matter, that has been transported from its original site by air, water, or ice and has been deposited in another location. The primary focus under the ASA will be on erosion of soil and its deposition in surface water.

Nutrients are dry or liquid materials that provide elements, such as nitrogen, phosphorus, and potassium that can nourish plants. Commercial fertilizers and animal manure are the two primary sources used to supply nutrients to plants in agricultural operations and will be the focal point of the ASA.

For the purposes of these guidelines, a toxin is any substance or mixture of substances intended to be used to prevent, destroy, repel or mitigate agricultural pests, or to be used as a plant regulator, defoliant or desiccant, commonly called pesticides. In addition, oil, gasoline, diesel fuel and other petroleum products are potentially toxic materials that are usually employed in farming operations.

Soil, nutrients, pesticides, oil, gasoline, and other petroleum products are good and useful when they are kept in their proper places. It is only when any of this material reaches a stream, river, well, lake or other water body that they become a problem.

3. *What the Act Means by "Pollution"*

The ASA defines pollution as "any alteration of the physical, chemical or biological properties of any state waters resulting from sedimentation, nutrients, or toxins." (Section 10.1-559.1 of the ASA.) When sediments, nutrients, or toxins enter the water from an agricultural activity, they constitute pollution under the ASA.

However, even if pollution is occurring, the ASA gives the Commissioner the power to dismiss a case if the Commissioner determines that:

" . . the pollution is a direct result of unusual weather events or other exceptional circumstances which could not have been reasonably anticipated, or determines that the pollution is not a threat to human health, animal health, or aquatic life, water quality or recreational or other beneficial uses . . . " (From Section 10.1-559.3 C of the ASA.)

There are two key questions for determining whether pollution is occurring or will occur.

1. Are there any barriers to prevent the sediment, nutrients, or pesticides from reaching the water?
2. Is the owner or operator using any practices designed to prevent the pollutant from reaching the water?

SECTION B - HOW INVESTIGATIONS ARE CONDUCTED

1. *Decision to Investigate*

The ASA is "complaint-driven." There can be no investigation of any farm activity unless the Commissioner receives a complaint. If the person making the complaint gives his name and no valid exception to investigation is identified in the preliminary review, the ASA requires that the Commissioner or the local District investigate the validity of the complaint. If the local District agrees to perform the District investigation, the Commissioner will ask the District to complete the investigation and provide evidence from its investigation within twenty-one days of the date the complaint was received by the Commissioner. The ASA gives the Commissioner the choice of whether or not to investigate a complaint that was made anonymously with the investigation conducted by the local District, if it wishes, or by himself. After the district and/or the Commissioner's staff submit the evidence to the Commissioner, the Commissioner will make the final determination on the complaint's validity.

The procedures described in the Guidelines are applicable to non-emergency situations. If the Commissioner is made aware of an emergency situation, special procedures may be used, to the extent authorized by law, in order to protect the environment and the public.

2. *Handling of Complaints*

Complaints are accepted by either verbal or written statement. However, when a complainant does not wish to reveal his or her name and address, the Commissioner has discretion whether or not to investigate the alleged concern. In addition, if complaints are unclear and not site specific, the Commissioner may decide not to investigate them.

3. *Who Investigates*

With the exception of the anonymous complaint, the District decides who investigates a complaint. Upon receiving a complaint, the Commissioner must notify the District and give it the option to investigate the complaint. Form 2 shows the standard manner of notification to a District and requests the District's assistance. (A copy of Form 2 is in Appendix E.)

The District has five days to tell the Commissioner whether or not it will investigate the complaint. A District may decide to assist in a joint investigation. This type of investigation would include both District and VDACS staff with the VDACS investigator having the lead role. When the District chooses to conduct the investigation on its own, it may indicate in writing or orally its decision to the Commissioner or his staff. Form 3 is designed to provide a District with sample

language that it may use in responding to the Commissioner's requests to investigate. (A copy of Form 3 is in Appendix E.)

A District may choose not to perform any investigations. Once a District has informed the Commissioner that it does not intend to perform ASA investigations, the District does not have to respond in the future to the Commissioner's notification that there is an ASA complaint involving an agricultural activity within its boundaries. As a courtesy, the Commissioner will continue to inform each District of such complaints.

4. *Time Limitations on Investigations*

The ASA requires that, for complaints investigated by a local District, the investigation must be completed within twenty-one days of the Commissioner's receipt of the complaint. The ASA does not specify a length of time in which the Commissioner or his staff must complete the investigation; however, it is the Commissioner's policy that investigations his staff or he conducts are completed within that time period. If the District conducts the investigation, the District will send its finding to the Commissioner so that he can determine whether a plan is necessary. The Commissioner is responsible for reporting his decision to the owner or operator.

5. *Notice to Owner or Operator of Investigation*

It is the policy of the Commissioner that his staff or the District, when it conducts the investigation, will give the owner or operator notice that the Commissioner has received a complaint; of the owner's or operator's agricultural activity which must be investigated. However, the Commissioner, in his discretion, may waive this policy. To document the notice and the investigation arrangements, the investigator (District or VDACS) will follow-up with a letter to the owner or operator. Form 5 shows the standard manner of a written notification for informing the owner or operator about a complaint. (A copy of Form 5 is in Appendix E.)

In those instances in which a District may not wish to give notice to the owner or operator about the complaint after they have agreed to investigate, VDACS will assist in delivering the initial notice of the investigation. VDACS will explain that a complaint has been received, that an investigation is necessary, and that someone from the District will contact the owner or operator to arrange a time to conduct a site investigation. Form 4 provides a place to document any telephone calls regarding this notice and other case activities. (A copy of Form 4 is in Appendix E.)

Regardless of who makes the initial contact, it is the policy of the Commissioner that the person who sends the written notice of the investigation to the owner or operator also send *written information* regarding the ASA. This policy may change at the discretion of the Commissioner. (VDACS will provide this information to the Districts if requested.) This information may provide the owner or operator an opportunity to learn more about the ASA, its procedures, and what the owner or operator can expect regarding resolution of the complaint.

6. *Notice of Findings from Investigation*

The Commissioner will notify the owner or operator of his decision as to whether a plan is necessary. When a District performs an investigation, it shall provide its findings to the

Commissioner so that he can make this decision. This includes all materials produced and collected during the investigation period. Form 9 was created to record this type of information. The Commissioner's notice to the owner or operator will either dismiss the complaint or inform the owner or operator that he needs to submit a plan to the Commissioner describing conservation measures needed to correct the pollution problem. This plan is due 60 days after the owner or operator receives a written notice informing him that a plan is necessary. Form 6 is the standard manner of written notification to inform the owner or operator that a plan is needed to correct the water pollution problem. Information regarding planning and implementation will be sent with this notification to assist the owner or operator. The Commissioner may consider a corrective order if a plan is not submitted within 60 days. (A copy of Forms 6 and 9 are in Appendix E.)

The owner or operator must begin implementing his plan within six months of receiving notice that a plan is necessary. Then, the owner or operator must complete implementation of his plan within a period specified by the Commissioner not to exceed 18 months of receiving the notice. The owner or operator can receive an extension in some cases, as described in Section 7 below.

Upon approving the owner or operator's plan, the Commissioner will inform the owner or operator and the complainant. The District will be copied on this correspondence.

7. *Extensions of Deadlines*

Sometimes an owner or operator may need more time to complete implementation of his plan because of circumstances beyond his control. The ASA provides that the Commissioner may grant an extension of up to six months (180 days) if a hardship exists *and* if the owner or operator has made a request for an extension at least 60 days prior to the date he was supposed to have completed implementing his plan. The Commissioner will determine that a situation constitutes a hardship if it was caused by circumstances beyond the owner's or operator's control, *and* if the owner or operator has been making a good faith effort to implement his plan. Hardship can include financial problems. In his response the Commissioner will explain to the requestor of an extension the basis for his choosing to approve or reject such a request.

8. *Notification of Landowner, if Different from Operator*

The Commissioner will make a good faith effort to notify the landowner as well as the operator when the Commissioner determines that the complaint involves an agricultural activity on land that the operator rents from someone else or when the operator manages the agricultural activity for the owner of the land. If the investigation shows that no pollution problem exists, or if the problem is easily corrected by the operator's change in field management, the Commissioner may determine that notification of the landowner is unnecessary. If the problem involves an old feature (e.g., an old gully) that was created before the present operator began renting the land, or if correcting the problem requires construction, the Commissioner may determine that the landowner needs to be notified.

9. *Right of Entry*

It is the Commissioner's policy that entry onto the land to conduct an investigation will be made with the consent of the owner or operator. However, it should be noted that the ASA gives the Commissioner, his designee, or a District the right to enter the *land* to determine whether or not the

complaint is valid. In addition, the Commissioner, his designee, or the District may enter the same land to check implementation of stewardship measures specified in a corrective order and maintenance of stewardship measures. This entry onto private property must be handled in accordance with constitutional requirements.

It is the Commissioner's policy that if a complaint alleges water pollution created by erosion coming from a specific field on the farm, then the ASA investigator will not enter other fields. If the complaint is made more broadly to say that erosion is coming from the farm as a whole into X stream, then the investigation will cover all of the farm that drains into X stream. If the complaint is made even more broadly to say that erosion is coming from the farm as a whole without naming the water body, then the investigation will cover the whole farm.

With the owner's or operator's consent, the ASA investigator will enter fields not covered by the complaint, examine or do other things that are relative to the investigation if consent is given voluntarily by someone who has the intelligence and ability to understand the situation and the possible consequences.

It is the policy of the Commissioner that the owner or operator of a farm that is subject of a complaint will be given notice of intended entry to investigate the complaint. A phone call or statement to the owner or operator is sufficient. After a call, written notice to the owner or operator will confirm the investigator's oral statements. Form 5 shows the standard manner of written notification to the owner or operator before entering land that is the subject of a complaint. (A copy of Form 5 is in Appendix E.)

If an owner or operator denies the Commissioner's representative entry onto the land or later withdraws his or her consent regarding entry, the investigator will leave the property immediately and report this to the Commissioner as soon as possible. The ASA authorizes the Commissioner to obtain a court order allowing entry.

10. *Purpose and Scope of Investigation*

The principal purpose of the investigation is to determine if there is substantial evidence that the agricultural activity in question is causing or will cause water pollution from sedimentation, nutrients or toxins, as alleged in the complaint. When performing an investigation, information to answer this question can be recorded on Form 9. (A copy of Form 9 is in Appendix E.)

It is the Commissioner's policy that activities that are causing or will cause pollution that were *not* the subject of the complaint should be pointed out to the owner or operator as areas that should be addressed, even though these areas are not covered by the ASA complaint. It is also the Commissioner's policy that the ASA's jurisdiction is "complaint-driven" and limited to the terms of the complaint.

11. *Evidence*

The ASA requires that there be "substantial evidence" that the agricultural activity is causing or will cause water pollution. "Substantial evidence" means more than a "scintilla" of evidence but less than a "preponderance" of the evidence. "Scintilla" means just a trace of evidence. Preponderance of the evidence means that overall there is more evidence showing that erosion has

been or will be caused by the activity than evidence showing the opposite.

12. *Sample Collection Techniques*

To maintain uniformity in the state's system of collecting water samples, VDACS will use the procedures developed by the Virginia Water Control Board (VWCB), as set forth in the applicable sections of VWCB's "Water Quality Assessment Operating Procedures Manual".

Due to the complexity and cost of water and fecal sampling and analysis, samples should be taken only when they are absolutely necessary to prove a case. When an investigator can see that pollutants are entering or will enter the water body in question, he will not need to take samples because the case can be proven through photographs, maps, eye-witness testimony, and the physical law of gravity. The experience of other states that have programs similar to the ASA suggests that sampling is only necessary in a few cases. For scientific analysis of any water or other evidence, the District investigator should contact a VDACS Agricultural Stewardship Coordinator for specific instructions. VDACS will pay for the scientific analysis of any water or other evidence collected by the District during the investigation period.

SECTION C - CONFIDENTIALITY OF INFORMATION

The law requires the Commissioner of Agriculture and Consumer Services to hold records of active investigations in confidence. These records of active investigations include those records of active investigations created or held by the Districts pursuant to the Agricultural Stewardship Act. The owner or operator may review whatever notes and records the investigator has made after an ASA investigation is concluded. An investigation is concluded when the Commissioner has decided whether an agricultural activity is creating or will create pollution that requires an agricultural stewardship plan.

A District could receive a request under the Virginia Freedom of Information Act ("FOIA") (Chapter 37 (Sections 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia) to disclose records regarding an active investigation. Any request made to the District for records of active investigations under the Agricultural Stewardship Act should be referred immediately to the attorney who represents the District.

SECTION D - SUBSEQUENT VISITS TO FARM TO CHECK IMPLEMENTATION

In most cases, after the site investigation has been completed, no further on-site reviews are necessary once the Commissioner has sent a notice advising that a stewardship plan will be required. However, subsequent on-site reviews are necessary when an ASA plan is required. The purpose of the subsequent on-site review is to determine whether the owner or operator is implementing his ASA plan in accordance with his implementation schedule.

Subsequent on-site reviews have enforcement implications, which are the Commissioner's responsibility; so, Districts should not undertake subsequent visits without VDACS' express agreement. (This need for agreement from the Commissioner does not apply to a District's best management practices "spot-check" to determine compliance with a District cost-share agreement, even for a practice installed to meet ASA requirements.)

SECTION E - APPEALS AND FACT FINDING CONFERENCES

If an owner or operator who has been issued a notice under the Act fails to submit an agricultural stewardship plan, begin actively implementing the plan, complete implementation of the plan, or maintain the stewardship measures, the Commissioner shall issue a corrective order to such owner or operator. The order shall require that such activity be accomplished within a stated period of time.

The Commissioner shall issue a corrective order only after an informal fact-finding conference. Informal fact-finding conferences are used to determine the factual basis for the Commissioner's decisions under the Agricultural Stewardship Act.

ASA gives "persons aggrieved" the right to appeal decisions of the Commissioner to the Virginia Soil and Water Conservation Board.

SECTION F - SOURCES OF ASSISTANCE FOR OWNER OR OPERATORS

There are several sources of assistance available to owners or operators to address pollution problems and to develop stewardship measures and plans. Areas of assistance and possible sources are listed below:

1. *Technical Assistance*

Planning and, if necessary, engineering assistance is often available through:

- Local Soil and Water Conservation District
- Department of Conservation and Recreation
- U. S. Department of Agriculture, Natural Resources Conservation Service
- Virginia Cooperative Extension
- Virginia Department of Agriculture and Consumer Services
- Private businesses
- Consultants

2. *Cost-Sharing*

Cost-Share assistance that may be available to implement plans is offered by:

- Local Soil and Water Conservation District
- U. S. Department of Agriculture, Farm Service Agency
- U. S. Department of Agriculture, Natural Resources Conservation Service
- Virginia Department of Environmental Quality

3. *Financial Planning*

Financial planning is always a consideration when making decisions that affect a farming operation. These organizations can be of assistance to the farmer in his financial planning:

- Virginia Cooperative Extension (e.g., Farm Management Agents)

- Private financial institutions (e.g., commercial banks, agricultural financing organizations)

4. *Physical Planning for Compliance with ASA*

The ASA requires that the plan be returned to the Commissioner's Office and the District within 60 days after receiving notice that a plan is necessary. The local District must then review the plan. If the plan meets the ASA requirements, then the Commissioner will send notice of approval to the owner or operator within 30 days. The owner or operator must begin implementing the plan within six months and complete plan implementation within 18 months unless specified differently by the Commissioner. The Commissioner may require an implementation schedule consistent with seasons and other temporal considerations, therefore, increasing the chance of success in establishment or construction of the measures required in the plan. The Commissioner may consider a corrective order if plan implementation schedule is not met or if the problem is not corrected.

A. *Public Sources of assistance in planning*

- Local Soil and Water Conservation District
- Virginia Department of Conservation and Recreation
- USDA, Natural Resource Conservation Service
- Virginia Cooperative Extension
- Virginia Department of Agriculture and Consumer Services

B. *Private Sources*

- Private businesses (e.g., engineering and consulting firms)
- Agribusiness organizations

C. *Required Contents of Plans*

The plan must include the following minimum requirements under the ASA:

- Stewardship measures needed to prevent the pollution, and
- Implementation schedule.

The plan should also include:

- A map showing area of concern and affected water feature
- Statement of pollution problem
- Signature page for the owner or operator, local district director and Commissioner

The owner or operator will have received a letter from the Commissioner notifying the owner or operator of the results of the investigation. This letter specifies the components of the agricultural activity that are causing or will cause water pollution. (A copy of this letter is in Appendix E, labeled as Form 6.) All of these components must be addressed in the plan.

If necessary, simple plans can be converted into more sophisticated formats after this deadline has been met. Planners should be sensitive to the fact that the owner or operator has a second deadline to meet: the owner or operator must begin implementing the plan within six months

of receiving the official notice that the plan has been approved. Form 10 provides an example format of an ASA plan. (A copy of Form 10 is in Appendix E.)

Amendments to plans are acceptable as long as the amendments prevent or eliminate the pollution. Amendments must be reviewed by VDACS before the plan completion date. An amendment that necessitates an extension of time will not be denied simply because the time of completion will be delayed; however, the Commissioner may consider whether the additional time is needed because of the actual change in plans or because of any lack of due diligence by the owner or operator.

To make the planning process most effective, owners or operators should be given options for solving their pollution problem whenever possible. In terms of appropriate options, the ASA defines stewardship measures as “the best available nonpoint source control methods, technologies, processes, siting criteria, operating methods or other alternatives.” There are often a variety of best management practices that can be employed to solve a single pollution problem. Thus, the planner will often have a wide variety of options from structural practices to changes in operating methods that can be offered to the owner or operator as solutions to the pollution problem. These options need not be the most expensive or employ the most sophisticated technology; they only need to prevent the pollution in question within the timeframe of the plan to be the “best”. A plan that merely substitutes one form of pollution for another, however, is not acceptable.

SECTION G - VIOLATIONS AND PENALTIES

Under the ASA, the Commissioner issues a corrective order when the owner or operator fails to comply with the ASA. The Commissioner *must* issue a corrective order if the owner or operator is found to need a plan and fails to submit or to implement his plan according to the Act's standards {Section 10.1-559.4}.

A person who is subject to a corrective order issued by the Commissioner has the right to go to the Soil and Water Conservation Board to appeal that corrective order. Further, that person has the right to appeal the decision of the Board to the appropriate circuit court.

If an owner or operator fails to comply with the ASA, he or she may be subject to civil penalties and orders issued by the Commissioner. The ASA does not create any crime -- only civil violations. (See Appendix B, Civil Penalty Matrix for the Agricultural Stewardship Act Program.)

SECTION H - INTERGOVERNMENTAL COOPERATION

The ASA requires that agricultural activities that are causing or will cause water pollution be corrected. It is very important that all agencies work together in a cooperative effort using a common-sense approach to assist owners or operators in effectively correcting these problems. Listed below are agencies and their roles in relation to the ASA.

1. *Department of Environmental Quality and the Virginia Water Control Board (“DEQ” and “VWCB”)*

Virginia’s State Water Control Law gives the VWCB broad jurisdiction over almost all types of water pollution, whether point source or nonpoint source, whether agricultural or non-agricultural in origin, and involving any type of pollutant. (See Section 62.1-44.5 of the Code of Virginia.) The

ASA gives the Commissioner jurisdiction over a smaller portion of this same area of concern: water pollution caused by three types of pollutants coming from agricultural activities not currently subject to a permit issued by VWCB through DEQ. The Commissioner's and the VWCB's jurisdiction overlap, but the Commissioner's jurisdiction is a subset of the VWCB's. Therefore, DEQ and the Commissioner shares jurisdiction over agricultural nonpoint source pollution.

The VWCB has asserted its jurisdiction over certain types of agricultural operations by requiring them to obtain permits. For those agricultural activities that are subject to a permit issued by the VWCB (through DEQ), the ASA is not applicable. The ASA expressly provides that those operations are exempt from the ASA. When a complaint arises regarding an operation that is subject to a VWCB permit, the complaint will be dismissed. Then the owner or operator should be informed that he should check to make certain that the owner or operator is in compliance with his VWCB permit. The owner or operator should be given the address and phone number of his regional DEQ office, so that DEQ can answer any questions that the owner or operator may have. After the complaint is dismissed, the complainant will be notified explaining that DEQ has jurisdiction.

2. Department of Conservation and Recreation (“DCR”)

DCR is Virginia's primary natural resource conservation agency and provides owners or operators with technical assistance in developing nutrient management plans. In this program, DCR maintains a staff of specialists in field offices throughout the state to provide nutrient management planning (NMP) assistance. Closely connected with the NMP technical assistance program is DCR's certification program for nutrient management planners from both private and public organizations.

In addition to its programs related to NMP, DCR provides the Districts with coordination services at the state level. DCR is the major conduit of funds for Districts. An integral part of this program is the state cost-share program that DCR administers and the Districts implement. In relation to the ASA, DCR can provide its NMP assistance to owners or operators with corresponding ASA planning needs, as well as cost-share assistance.

DCR collects land-use and related data from across the state to identify small watersheds where the potential for nonpoint source pollution is high. DCR also provides various predictive modeling services that help estimate the progress made in reducing nonpoint source pollution.

Of particular interest to the ASA program is DCR's close relationship with the Virginia Soil and Water Conservation Board (“Board”). DCR provides the staff services to the Board that help the Board meet its ASA obligations.

3. Natural Resources Conservation Service (“NRCS”)

Established during the 1930's within the United States Department of Agriculture, the NRCS pioneered the planning approach to conservation management. The NRCS has developed numerous conservation techniques and practices to conserve, improve and sustain natural resources on private lands.

In addition to setting the standards for a wide variety of conservation practices, the NRCS provides technical assistance to landowners and managers in many localities throughout the State. They often work closely with the local Districts. The NRCS also assists other federal agencies in

administering the federal cost-share program for agricultural conservation practices. In relation to the ASA, the NRCS continues to provide its technical and cost-share assistance (when and where appropriate) to owners or operators faced with ASA needs.

4. *Virginia Cooperative Extension (“Extension”)*

Extension has played an important role over the years by providing landowners and managers with education regarding a wide variety of concerns. These educational services range from production matters to farm financial planning to natural resource technical and planning assistance.

In relation to the ASA, Extension continues to provide technical and planning assistance to owners or operators to prevent complaints under the ASA and to assist in the preparation of ASA plans, at least in those areas where Extension has resources to provide such assistance. Extension's Farm Management Agents, who provide financial planning assistance, may be called upon to provide financial planning assistance in relation to the development of an ASA plan. In response to owner or operator questions, Extension is also likely to provide some education to owners or operators regarding the ASA itself.

In addition, Extension has developed an on-farm self-assessment program that can help producers identify potential sources of water pollution. This program is called a Farm*A*Syst.

Local Extension agents can help farmers learn more about Farm*A*Syst. Using Farm*A*Syst can be an important step that farmers can take to prevent certain ground water pollution problems.

5. *Soil and Water Conservation Districts (“Districts”)*

As described in other sections of these guidelines, the Districts may play a role in investigating complaints, if they choose to do so. The decision of whether or not it will perform investigations lies with each District individually. Pursuant to the ASA, all Districts will play a role in the ASA by reviewing ASA plans that are being sent to the Commissioner.

As political subdivisions of the Commonwealth, the Districts are the local sources of technical and planning assistance for agricultural conservation practices, in many instances. The Districts, together with other conservation agencies, have helped produce an advanced agricultural system that blends conservation and resource protection with enhanced production techniques.

The Districts are the local administrators of the cost-share program. Beyond the investigative and review roles that the ASA speaks to directly, the Districts can provide continued planning and technical assistance to owners or operators with ASA needs. Where and when appropriate, the Districts can provide cost-share assistance.

6. *Chesapeake Bay Local Assistance Department (“CBLAD”)*

The Chesapeake Bay Preservation Act (“Bay Act”) was enacted in 1988, and CBLAD was established shortly thereafter to administer the Bay Act’s programs.

Section 10.1-559.10 of the ASA makes it clear that any local government may, subject to

certain conditions, adopt an ordinance establishing a process for filing complaints, investigating them, and creating agricultural stewardship plans where necessary to correct pollution problems.

Likewise, Section 10.1-559.11 seeks to address potential conflicts with the Bay Act regulations. This section states that nothing in the ASA shall be interpreted to duplicate the agricultural requirements in the regulations adopted pursuant to the Bay Act. In fact, the ASA is intended to supplement and work alongside the Bay Act and its regulations. ASA investigators and planners should note that, while the ASA guidelines seek to provide a consistent implementation process across local jurisdictional boundaries, local enforcement of violations of Bay Act ordinances may vary somewhat from one locality to another.

Under the Bay Act regulations and local Bay Act ordinances, agricultural landowners are required to (1) establish (where one does not exist) and maintain a 100-foot-wide vegetated buffer separating the land upon which agricultural activities are being conducted and adjacent environmentally sensitive features, and (2) obtain a soil and water quality conservation plan (SWQCP) addressing erosion, nutrients and pesticides. This plan must be approved by the local District Board. A SWQCP, or parts thereof, is only required to be implemented if a reduction in the width of the 100-foot-buffer is sought.

- If an ASA investigator is informed by the owner or operator that the owner or operator has a Bay Act SWQCP, the investigator should review the plan to see what best management practices (BMPs) have been recommended for water quality protection and what is actually being implemented by the owner or operator.
- In some cases, the ASA investigator may find that the BMP recommended in the SWQCP already addresses the water quality problem complained of, but was not required to be implemented under the Bay Act. Rather than duplicating efforts, the ASA investigator may simply refer to the information in the SWQCP and recommend that the owner or operator implement any or all relevant parts of the plan that address the identified ASA water quality problem.
- Local governments in Tidewater Virginia may consider the ASA as a way by which the ASA's enforcement mechanisms may be used to further the goals of the Bay Act.
- If an ASA complaint involves a Bay Act vegetated buffer (e.g., a channel has formed in the field and continues through the buffer emptying directly into the stream), the stewardship measures included in the ASA plan must not conflict with either the allowable buffer reductions under the Bay Act regulations or with the buffer performance criteria established via the Bay Act. If the ASA investigator or planner has questions regarding the reduction rules or the performance criteria, the investigator or planner should contact the local District.

7. Soil and Water Conservation Board ("Board")

The Board provides the initial forum in which appeals from the Commissioner's decision may be heard. Any person wishing to submit an ASA appeal to the Board should contact DCR for more information.

8. *Virginia Department of Agriculture and Consumer Services (“VDACS”)*

Beyond providing assistance to the Commissioner in investigations and enforcement, VDACS’ staff assists in communicating the results of the investigations with complainants.

VDACS also serves as the primary coordinating agency for administering the ASA. In addition to developing these guidelines, VDACS initiates the reporting and assessment processes annually. The purposes of the annual reporting and assessment process is to identify trends and needs and to seek means of addressing any problems that develop in the system of administering the ASA.

In some cases, VDACS provides technical and planning assistance to owners or operators in the wake of a complaint. VDACS’ other main role is to coordinate the administration of the ASA with the Districts and other partners. VDACS’ main goal in administering the ASA is to institute a “farmer-friendly” set of mechanisms by which owners or operators can address water pollution problems on a case-by-case basis, without the necessity of further overall regulation.